

## **Brief History of Legislative Change to Address Salary Spiking and/or Return to Work**

**1981** Amended the definition of Average Final Compensation to include three options for reporting termination pay and funding the resulting increase in the calculation of average final compensation. The change was intended to stop the practice of spiking salaries through the reporting of large lump sum payouts for unused sick and annual leave.

**1983** Amended the definition of Earned Compensation to include all forms of remuneration paid to a member, such as special duty pay or tax deferred deductions, and to exclude fringe benefits and amounts paid in kind. The goal was to collect employee and employer contributions on all forms of compensation paid to a member throughout their entire career and to stop the practice of reporting irregular forms of compensation only in the final years before retirement.

Increased the amount a retire member could earn in a TRS covered position from one fourth to one third of their average final compensation.

**1989** Inserted language in definition of Earned Compensation to clarify that amounts paid under a cafeteria plan must be reported to TRS as earned compensation. Again, the attempt was made to collect employee and employer contributions on all forms of compensation to help fund benefits.

To reduce the impact of salary spiking, the definition of Average Final Compensation was amended to limit compensation increases to no more than 10% per year.

**1995** Clarified the 10% cap provisions. Qualified that earned compensation could be limited by federal regulation, IRC 401(a)(17), and offered further clarification requiring housing and other forms of compensation be reported to TRS in an attempt to limit the opportunities to spike salaries in the final years before retirement, and excluded amounts paid "in kind" or fringe benefits not actually paid to the member.

**1997** Amended the definition of Average Final Compensation to exclude fringe benefits that had been converted to earned compensation, but had not been reported to the TRS for at least 5 years. This change was necessary to avoid the practice of changing excluded fringe benefits (primarily health insurance) to regular compensation reportable to TRS, resulting in salary spiking.

Added an extensive list of fringe benefits excluded from the definition of Earned Compensation in an attempt to be more specific and help avoid salary spiking.

Required members to have at least a 60 day break in service to be eligible to withdraw their account.

Required members to terminate from all positions in order to be eligible for retirement benefits, further clarifying members would not be eligible for retirement benefits until they had fully terminated.

To comply with federal regulation, amended return to work provisions to require that an “early” retiree have a bona fide break in service. This would mean that they would have to have at least a 30 day break in service and could not have a prearranged agreement to return to work before they terminated.

- 1999** General amendments intended to clarify the definitions of Average Final Compensation and Earned Compensation regarding reportable and non-reportable fringe benefits, and added a new definition of “Retired Member” to better define who would be eligible to return to work in part-time position.

Clarified provisions regarding retired members who returned to work in any part-time position, and clarified that benefits would be cancelled for any retired member who earned more than allowed, or returned to full-time employment.

- 2001** Again, we expanded the list of fringe benefits excluded from the definition of Earned Compensation and clarified that buyout of sick and annual leave paid at the end of the school year could not be included in Earned Compensation, the definition of Part-Time Service was changed from service that was less than 9 months to less than 180 days, clarified that a member must have terminated employment for all positions that “qualified” for membership to be defined as a retired member.

- 2003** Allow retired teachers, specialists or administrators, who had been retired for at least 12 months to be reemployed by a school full-time, without loss of TRS benefits. This provision was limited to K-12 school districts, the Pine Hills youth correctional facility, the Riverside correctional facility, and the Montana School for the Deaf and Blind. The University System was excluded. Employers continued to pay the normal employer contribution rate on the salary paid to the working retiree. Legislation sunset in three years. Three retired members took advantage of this temporary law.

- 2005** Provided minor relief to working retirees who earned small amounts in excess of their one third earnings limit by reducing future benefits \$1.00 for each dollar they earned in excess of the limited up to an amount equal to their monthly retirement benefit before benefits would be canceled.

Codified working retiree limits under §19-20-731, MCA (moved from 19-20-804), and clarified the provisions.

- 2007** Changed the definition of “full-time” and “part-time” service to mean 180 days or less, or 140 hour per month for at least nine months or less.

Added a statement of legislative policy clarifying that it was the Legislature’s intent to:

- provide equitable retirement benefits based on the member’s normal service and salary;
- limit the funding impact of salary spiking, and
- limit the compensation that a retired member may earn working in a TRS covered position.

Clarified that the maximum compensation a retiree returning to work may earn includes fringe benefits.